Decision ID No. 35412

Service Date: December 22, 2004

Post Environmental Assessment

Finance Docket No. 34391

New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railroad Co. - Construction, Acquisition, and Operation Exemption - in Wilmington and Woburn, MA

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EXECUTIVE SUMMARY

ES.1 INTRODUCTION

On December 3, 2003, New England Transrail, LLC d/b/a the Wilmington and Woburn Terminal Railroad Company (Applicant or NET) filed the Proposed Action with the Surface Transportation Board (Board) seeking an exemption pursuant to 49 United States Code (U.S.C.) 10502 from the formal application procedures of 49 U.S.C. 10901 for authority to construct 2,700 feet of new rail line, acquire 1,300 feet of existing track, and to operate the entire approximately 4,000 feet of track located on and adjacent to a parcel of land owned by Olin Corporation (Olin) in Wilmington, Massachusetts, upon which Olin had in the past operated a chemical plant. The Olin-owned parcel is located in Wilmington, Massachusetts, but a portion of the line to be constructed and operated by Applicant also would be located in Woburn, Massachusetts. Applicant proposes to make improvements on the property to be acquired from Olin, including a reload facility, and rehabilitation of the 1,300 feet of existing track, to facilitate the transloading of various commodities between truck trailers and rail cars.

Ongoing environmental remediation to make this site suitable for redevelopment (related to Olin's previous industrial activity on this property) would not be affected by Applicant's project. Rather, environmental remediation activities on the subject property would remain Olin's obligation and Applicant would be bound by contract (and SEA's recommended mitigation) not to impede that work in any way.

ES.1.1 BOARD'S OBLIGATIONS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT

The Board's Section of Environmental Analysis (SEA) prepared an Environmental Assessment (EA), dated August 4, 2004, to meet the Board's obligations under the National Environmental Policy Act (NEPA). The EA identified and evaluated the potential direct, indirect, and cumulative environmental impacts of the Proposed Action, including the potential of the Proposed Action to impact Olin's ongoing environmental remediation activities that are unrelated to this project.

The 53-acre parcel is located at 51 Eames Street in Wilmington, Massachusetts on land formerly occupied by chemical manufacturing facilities. The Olin property has an extensive history of chemical contamination of its soils and groundwater. The manufacturing processes conducted at the facility generated liquid chemical wastes, including oils. The major source of the contamination of the property has been linked to the uncontrolled release of contaminated wastewater generated on the property into the soil. (For a history of the property, the chemical contamination there and Olin's ongoing response actions, under the direct supervision of the Massachusetts Department of Environmental Protection, see the EA available on the Board's website at www.stb.dot.gov and clicking "Decisions.")

The EA was made available to agencies, the public, and interested parties for a 30-day public comment period, which the Board extended by 14 days to September 17, 2004 at the request of local agencies and a citizen group. Many comments on the EA were received, and SEA has prepared this Post EA to respond to those comments and make final environmental recommendations.

ES.1.2 BOARD JURISDICTION

The Board has exclusive jurisdiction under Sections 10901 and 10501 of the Interstate Commerce Act over the construction, acquisition, and operation of common carrier rail lines. The Board's authorization may take the form of a "certificate of public convenience and necessity" issued under 49 U.S.C. 10901, or, as in this case, an exemption under 49 U.S.C. 10502 from the formal application procedures of Section 10901. Whether authorization is sought under the procedures of Section 10502, or Section 10901, the Board subjects the proposal to a careful review, including preparation of the environmental documentation required to meet the Board's obligations under NEPA. In this case, SEA prepared an EA, which considered in detail the expected environmental impacts of the Proposed Action.

In 1995, Congress enacted a broad Federal preemption provision, Section 10501(b), that expressly makes the Board's jurisdiction "exclusive" for all transportation by rail carriers, including the facilities and structures that are an integral part of that transportation.[1] Section 10501(b) also expressly states that "the remedies provided under this part are exclusive and preempt the remedies provided under Federal and State law." Thus, Section 10501(b) does not permit dual state and Federal regulation of railroads or activities related to rail transportation at railroad facilities. Accordingly, the case law interpreting this provision consistently has found state and local permitting or preclearance requirements (including zoning ordinances and environmental and land use permitting requirements) to be wholly preempted where the railroad facility is an integral part of the railroad's operations.[2] That is because permitting or preclearance requirements could give a local body the ability to deny the carrier the right to construct, develop, and maintain facilities or conduct operations, which would create an irreconcilable conflict with the Board's exclusive jurisdiction over those facilities and operations.[3]

But while exempt from traditional permitting, zoning, and land use processes for their railroad operations, railroads like NET are not necessarily exempt from other generally applicable laws. The legislative history makes it clear that "the States retain the police powers reserved by the Constitution."[4] Thus, States can take appropriate actions to protect public health

[1] 49 U.S.C. 10102(9); 10501(b).

[2] City of Auburn v. United States, 154 F.3d 1025 (9th Cir. 1998) (Auburn); Friberg v. Kan. City S. Ry., 267 F.3d 439 (5th Cir. 2001); Norfolk S. Ry. v. City of Austell, 1997 U.S. Dist. LEXIS 17236 (N.D. Ga. Aug. 18, 1997); Flynn v. Burlington N. Santa Fe Corp., 98 F. Supp. 2d 1186 (E.D. Wash. 2000); Joint Pet. for Decl. Order— Boston & Maine Corp. v. Town of Ayer, MA, STB Finance Docket No. 33971 (STB served May 1, 2001), aff'd, Boston & Maine Corp. v. Town of Ayer, 206 F. Supp. 128 (D. Mass. 2002), rev'd solely on attorneys' fee issue, 330 F.3d 12 (1st Cir. 2003) (Ayer); Borough of Riverdale — Pet. for Declar. Order — The New York Susquehanna & W. Ry., STB Finance Docket No. 33466 (STB served Sept. 10, 1999).

[3] Auburn, 154 F.3d at 1029-31.

[4] H.R. Rep. No. 104-311, 104th Cong., 1st Sess. at 95-96 (1995).

and safety so long as their actions do not serve to regulate rail operations or unreasonably interfere with interstate commerce.[5]

For example, a state or local government could issue citations or seek damages if harmful substances are discharged during a railroad construction or upgrading project. Similarly, nondiscriminatory application of state and local requirements such as building and electrical codes generally would not be preempted.[6] And railroads cannot avoid their obligations under consensual measures worked out between the railroad and the community.[7] Section 10501(b) must also be harmonized to the extent possible with other Federal statutes.[8] Thus, Federal environmental statutes such as the Clean Air Act and the Clean Water Act—statutory schemes that are implemented in part by the states—as well as railway safety regulation under the Federal Railway Safety Act, continue to apply to railroads to the extent that they would not unreasonably interfere with interstate commerce. Finally, state and local entities can raise their environmental concerns before the Board during the environmental review process under NEPA for consideration in cases like this one that require a license from the Board.[9]

In cases that trigger a NEPA review, the Board's mitigation sometimes will include conditions that require a railroad to consult with or seek approvals from other government entities, when the Board is reasonably confident that those requirements will not be applied in a discriminatory manner or in a manner that would interfere with the railroad's right to conduct its operations. Where the Board imposes a condition that a railroad applicant meet the reasonable requirements of other government entities as a condition to a license from the Board, the Board controls the process and can take steps later, if necessary, to ensure that the state law is not being applied in such a way as to unduly restrict a railroad's operations or unreasonably burden or interfere with interstate commerce.

While the reload facility at issue here is clearly used in transportation by a rail carrier—and thus is subject to the Board's exclusive jurisdiction under Section 10501(b)—a Board license is not required for the facility.[10] Nonetheless, Applicant's reload facility, and the truck traffic that it is expected to generate, were addressed in the EA since the traffic-related impacts of that facility are so closely connected to the proposed rail construction, acquisition, and operation activities that do require a Board license. Morever, the proposed rehabilitation of the 1,300 feet of existing track on the property does not require a Board license. [11] However,

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[5] See Ayer.

[6] Id.

[7] Township of Woodbridge v. Consol. Rail Corp., No. 42053 (STB served Dec. 1, 2000).

[8] Tyrrell v. Norfolk S. Ry., 248 F.3d 517 (6th Cir. 2001); Friends of the Aquifer et al., STB Finance Docket No. 33966 (STB served Aug. 15, 2001).

[9] See Auburn, 154 F.3d at 1033.

[10] See 49 U.S.C. 10501(b); 10906.

[11] Board approval is not required to improve or upgrade an existing line that does not extend the (continued...)

under NEPA and the Council of Environmental Quality (CEQ) guidelines implementing NEPA,[12] matters that fall outside the Board's regulatory control must be considered to the extent that they are a direct consequence of actions that are within the Board's regulatory authority.[13]

Thus, the EA here includes consideration of the potential environmental impacts of Applicant's Proposed Action on truck traffic and impacts resulting from the operation of the proposed reload facility and rehabilitation of the existing track.

ES.1.3 BOARD DECISIONS

By petition filed on December 3, 2003, Applicant requested that the Board conditionally grant the exemption, subject to the agency's later consideration of the environmental impacts. On March 2, 2004, the Board issued a decision finding that, from a transportation perspective, the proposed construction, acquisition, and operation meets the standards for the grant of a conditional exemption. In that decision, the Board stated that it would issue a final decision as to whether the exemption should be allowed to go into effect upon consideration of the potential environmental impacts following completion of the Board's environmental review.

ES.2 PURPOSE AND NEED FOR THE PROPOSED ACTION

According to Applicant, the purpose of the Proposed Action is to construct, acquire, and operate a railroad and a reload facility to facilitate the transload of various commodities between highway and rail transportation modes in the Boston metropolitan area of Massachusetts. Applicant states that the Proposed Action would address a shortage of highway-to-rail transload facilities in the greater Boston metropolitan area by providing needed rail transportation infrastructure.

ES.3 ALTERNATIVES

ES.3.1 PROPOSED ACTION

Applicant proposes to acquire a parcel of land owned by Olin, restore to operating condition the 1,300 feet of existing industrial trackage located on the property, construct approximately 2,700 feet of new trackage, and, once construction is completed, provide rail common carrier service over both the newly-built and rebuilt trackage. According to Applicant, the trackage to be restored and constructed would be approximately 4,000 feet in total length. Applicant also proposes to construct on-site improvements, including a reload facility, to facilitate the transload of various commodities between truck trailers and rail cars.

[11] (...continued)
railroad's territory. See Detroit/Wayne County Port Authority v. ICC, 59 F. 3d 1314 (D.C. Cir. 1995).

[12] 40 CFR 1500 et seq.

[13] See 40 CFR 1508.25.

As explained above, although the Board does not have licensing authority over all aspects of the project, under NEPA and the CEQ guidelines, matters that fall outside the Board's regulatory control should be addressed in an agency's environmental review to the extent that they are an integral part of actions, such as the construction, acquisition and operation of a rail line, that are within the Board's regulatory control and that there is adequate information about these proposals to allow for meaningful consideration by the Board. Because the construction, acquisition, and operation of the track, and operation of the reload facility here are so closely connected (none of these actions would occur without the others), and sufficient information to permit meaningful review is available, SEA included an appropriate analysis of these actions as part of the Proposed Action.

ES.3.1.1 Rail Traffic

Applicant intends to operate one round trip train with approximately 25 rail cars six days a week between 1:00 a.m. and 5:00 a.m.

ES.3.1.2 Truck Traffic

Applicant estimates that approximately 400 truck trips per day could be generated by the reload facility, depending on the success of the business. Initial operations are expected to generate approximately 200 truck trips per day.

ES.3.1.3 Commodities

Applicant anticipates that upon commencement of operations, the proposed new line would handle a variety of commodities, including: aggregates, brick, coal, cement, construction debris, contaminated soils, liquid chemicals (all of which would be nonhazardous and nonexplosive),[14] lumber, newsprint, nonhazardous waste, paper products, plastics, propane, recycled paper and plastic, sand, gravel, scrap steel, steel, stone, wood products, and any other products that could be transported in intermodal containers. Except for propane, aggregates, lumber, sand, salt and gravel, and stone, none of these commodities would be stored, processed or handled at the reload facility other than during the reload process itself.

ES.3.2 NO-ACTION ALTERNATIVE

Under the No-Action Alternative, Applicant would not construct, acquire, or operate the entire 4,000 feet of track or the proposed multi-commodity truck-to-rail reload facility. Accordingly, the environmental impacts associated with the Build Alternatives would not occur. There would be no need for Applicant to acquire the Olin property. The only activity occurring at the Olin property would be the ongoing environmental remediation from previous industrial activity involving Olin.

[14] Applicant states that examples of non-hazardous and non-explosive chemicals that could be transported over the proposed line are soda ash and calcium carbonate. Due to their non-hazardous status, neither chemical is regulated for shipping by the U.S. Department of Transportation.

ES.3.3 BUILD ALTERNATIVES

SEA considered three build alternatives for this project: the Olin Alternative (Proposed Action), the Tewksbury Alternative, and the Ayer Alternative. Each of the build alternatives was identified and assessed to determine their potential to meet Applicant's purpose and need. Two of these alternatives, the Tewksbury and Ayer Alternatives, were eliminated from further consideration for the reasons discussed below.

ES.3.3.1 Olin Alternative (Proposed Action)

The Proposed Action is composed of the proposed construction, acquisition and operation of 4,000 feet of track, and operation of the reload facility, including related truck activities. As discussed in more detail below and in the EA, the Olin Alternative meets the Applicant's purpose and need and provides the most preferable location for Applicant's project.

ES.3.3.2 The Tewksbury Alternative

Applicant's purpose and need is to acquire rail facilities and operate a reload facility accessible to the center of the Boston metropolitan area and its highway network and with the capacity to transload materials from truck to rail. A property located in Tewksbury, Massachusetts was initially considered because of its access to the Boston metropolitan area and its meeting the minimal requirements of Applicant's purpose and need for the railroad and reload facility. But after evaluating the Tewksbury location, that location was determined to be unsuitable because it is located close to residential and retail areas and comprises only 8 acres of land, which would not be enough to support the new railroad and the reload facility. In addition, the property is located approximately 30 miles from downtown Boston. Therefore, this property was eliminated from detailed analysis in the EA.

ES.3.3.3 Ayer Alternative

Another potential alternative considered in the EA was the Ayer Alternative located in Ayer, Massachusetts. The Ayer Alternative was eliminated from consideration for detailed analysis in the EA because it is located more than 35 miles from downtown Boston and thus does not meet Applicant's need for land near Boston suitable to support a rail line and reload facility. Moreover, the Ayer Alternative would not be suitable because it is not located near an active rail line.

ES.4 OVERVIEW OF AFFECTED ENVIRONMENT

The Olin property is bounded to the east by the Massachusetts Bay Transportation Authority Boston-Concord main line, to the west by the Boston and Maine Railroad rail spur that was formerly used to serve the Olin property, to the north by Eames Street, and to the south by an industrial area and a former calcium sulfate landfill. The land uses in the immediate vicinity of the proposed project site include general industrial parcels. The proposed project site is located within the property boundaries of the Olin property.

ES.5 SUMMARY OF SEA'S CONCLUSIONS AND RECOMMENDED MITIGATION

Based on its independent analysis of all information available at this time, SEA concludes that Applicant's Proposed Action would not result in any significant environmental impacts if the mitigation measures recommended in this Post EA are imposed and implemented. Accordingly, SEA recommends that, in any decision by the Board granting final approval to the proposed construction, acquisition, and operation, Applicant should be required to implement the mitigation set forth in Chapter 1 of this Post EA, as well as any additional conditions for handling solid waste that may be imposed by the Board, upon recommendation by SEA, after receiving recommendations of the Massachusetts Department of Environmental Protection. See Condition 13. The 38 recommended mitigation conditions in the Post EA include new conditions added to the 12 mitigation conditions set out in the EA. These conditions were developed in response to comments, additional analysis, and Applicant's suggested voluntary mitigation.[15] The conditions address a broad range of issues including transportation and safety, water resources, biological resources, air quality, solid waste, noise, odor and dust, community relations, emergency response, and hazardous materials/waste sites. SEA's final recommended mitigation would reduce or avoid any potential for significant environmental impacts associated with such issues as surface water, groundwater, the Maple Meadow Brook Aquifer, wetlands, and the transportation and handling of hazardous materials and solid waste. Because the Proposed Action, as mitigated, would not have the potential for significant environmental effects, preparation of an EA for this case is appropriate and the full Environmental Impact Statement (EIS) process is unnecessary.

The Board will now consider the entire environmental record, including SEA's final recommended mitigation measures and all environmental comments received in this proceeding in making its final decision as to whether to allow the Proposed Action to proceed, and if so, what mitigation to impose.

[15] Where appropriate, changes have been made to the 12 conditions proposed in the EA and to Applicant's proposed voluntary mitigation.

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CHAPTER 1
FINAL RECOMMENDED MITIGATION

Chapter 1 presents SEA's final recommended mitigation. Based on the information available, consultations with appropriate agencies, and SEA's environmental analysis, these mitigation measures address the expected environmental impacts of the construction and operation of the Proposed Action.

SEA encourages Applicants to propose voluntary mitigation. In some cases, voluntary mitigation replaces mitigation measures that the Board might otherwise impose or it could supplement the Board's mitigation. Applicant has developed several voluntary mitigation measures in addition to those presented in the EA. Section 1.2 of the Post EA, contains their voluntary mitigation.

SEA recommends to the Board that it impose all of the recommended mitigation measures set forth in Chapter 1 of this Post EA if the Board decides to grant final approval for this project.

1.1 SEA'S RECOMMENDED MITIGATION

Transportation and Safety

1. Prior to initiating any project-related rail operations, Applicant shall develop internal emergency response plans for construction and operation activities to allow appropriate agencies and individuals with emergency response responsibilities to be notified in case of a project-related emergency. Applicant shall provide the emergency response plans to the relevant state and local entities, including emergency response agencies in the Town of Wilmington and the Town of Woburn.

2. Applicant shall comply with the reasonable requirements of the U.S. Environmental Protection Agency regulations regarding handling and disposal of any hazardous or nonhazardous waste materials encountered or generated during construction of the rail line.

3. In the event of a spill, Applicant shall comply with the applicable reasonable requirements imposed by the U.S. Environmental Protection Agency (spill prevention and clean-up, at 40 CFR 263) and the Occupational Safety and Health Administration (emergency response and clean-up operations for release, at 29 CFR 1910.120) under these regulations.

4. Applicant shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180).

Noise

5. Applicant shall comply with Federal Railroad Administration regulations (49 CFR Part 210) establishing decibel limits for train operations.

Water Resources

6. Applicant shall use Best Management Practices, such as straw bales and silt screens, during project-related construction to minimize surface water runoff, sedimentation into water bodies, and impacts to wetlands.

7. Applicant shall comply with the reasonable requirements of the U.S. Environmental Protection Agency for any project-related stormwater discharge, if such discharges occur.

8. Applicant shall not service project-related construction equipment within 25 feet of wetlands and shall refuel such equipment at least 100 feet from these sensitive areas.

9. Applicant shall not clean on the project site any railcars or trucks or any equipment handling waste.

Biological Resources

10. Should project-related construction and operation activities affect previously unidentified threatened or endangered species, Applicant shall immediately cease construction activities and contact the U.S. Fish and Wildlife Service for guidance on how to protect these species.

Air Quality

11. Applicant shall comply with all reasonable requirements of the U.S. Environmental Protection Agency regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

Cultural Resources

12. If previously undiscovered archaeological remains are found during construction activities, Applicant shall cease work and immediately contact the Massachusetts Historical Commission regarding appropriate measures to protect the resource.

Solid Waste

13. The Massachusetts Department of Environmental Protection shall have up to 30 days from the date of the Board's final decision to consult with SEA and notify SEA of what additional conditions, if any, the Board should impose on Applicant prior to the institution of transload operations for solid waste materials as a result of this project. In doing so, Massachusetts Department of Environmental Protection shall provide support for why the condition/s is required to mitigate potential harm and protect the environment and public health and safety. Applicant shall have 20 days to reply. SEA shall then review the response of Massachusetts Department of Environmental Protection and any reply by Applicant, and shall then recommend to the Board the imposition of any additional conditions, where appropriate, to address the specific concerns of Massachusetts Department of Environmental Protection .

1.2 APPLICANT'S VOLUNTARY MITIGATION

Emergency Response

14. As agreed to by Applicant, should a spill occur or contaminated soil and/or groundwater be encountered during project-related construction, Applicant shall follow the appropriate emergency response procedures customarily required by the Massachusetts Department of Environmental Protection.

Community Relations

15. As agreed to by Applicant, Applicant shall establish a Community Liaison to consult with local agencies and officials on project-related issues during the construction and operation of the Proposed Action and for one year following commencement of rail operations. Applicant shall provide the name and phone number of the Community Liaison to appropriate local officials in the Town of Wilmington and the Town of Woburn.

Road Network

16. As agreed to by Applicant, Applicant shall employ the following measures to reduce potential transportation impacts in the proposed project area:

- As new customers are added to the reload facility, Applicant shall instruct drivers that they must approach/depart the reload facility from/to the east, and shall not use Route 38 to the west, except for local deliveries;

- Applicant shall design the entrance/driveway at Eames Street to encourage traffic exiting the facility to make a right turn toward Woburn Street. This would be accomplished by having the east side of the entrance/driveway angled toward the east to facilitate turns to and from the east;

- Applicant shall post signs at the entrance and exit driveways instructing customers leaving the reload facility not to make left turns, except for local deliveries;

- Applicant shall monitor trucks at the reload facility's security gate or truck scales as they enter/leave. Customers shall be notified if their drivers repeatedly ignore the instructions not to use Route 38. Drivers who repeatedly ignore the foregoing directions shall be prohibited from using the reload facility.

17. As agreed to by Applicant, Applicant shall provide the Town of Wilmington with up to $50,000 to assist the town in purchasing land to expand the Eames Street right-of-way and improve the right-turn geometry of the Eames Street and Woburn Street intersection.

Noise

18. As agreed to by Applicant, Applicant shall design, install, and/or acquire sound attenuation components on stationary equipment and/or sound attenuation structures to minimize

noise levels from stationary equipment so that noise at the nearest sensitive receptor to such equipment is no more than an increase in community noise exposure as measured by Day-Night Average Noise Level (L_{dn}) of 3 A-weighted decibels (dBA) or 65 dBA L_{dn}.

Odor and Dust

19. As agreed to by Applicant, Applicant shall develop, acquire, and/or institute odor and dust control measures to the extent necessary to prevent any significant impacts beyond the boundaries of the reload facility. With regard to odors and dust associated with the handling of waste, Applicant's installations and operations shall comply with the technical specifications for the mitigation of dust and odors set forth by the Massachusetts Department of Environmental Protection.

Water Resources

20. As agreed to by Applicant, Applicant shall implement local Best Management Practices regarding surface water and stormwater management and comply with all applicable Federal, state and local requirements governing the management of stormwater.

Specifically, Applicant shall ensure compliance with the standards at 310 Commonwealth of Massachusetts Regulations (CMR) 9.0, Waterways, and 310 CMR 10.0, Wetlands Protection Act, regulations and regulatory guidance (e.g., the Massachusetts Stormwater Management Technical Handbook) concerning stormwater flow rate, acceptable content, mitigative methods if technical standards are exceeded, and discharge points within the development property and adjacent natural waterways and wetlands. The applicable technical requirements of State regulations at 314 CMR 3.00, Surface Water Discharge Permits, 314 CMR 7.00, Sewer Extension/Connection Permits, and 360 CMR 10.00, Sewer Use, and associated guidance documents, should also be met. Applicant's Licensed State Practitioner (LSP)/Environmental Engineer shall determine whether the above-mentioned technical standards are met.

21. As agreed to by Applicant, Applicant shall conduct all maintenance and fueling on those paved areas at the project site with protective berms and drains. Rail cars and trucks shall not be cleaned on the premises except on paved areas with protective impervious berms and drains.

22. In the event of a release or spill (of less than 10 gallons) of fuel or other oil from fueling operations or hydraulic equipment line breaks, Applicant's on-site response personnel trained in emergency response shall respond. Since fueling and maintenance operations shall occur only paved areas with protective berms, any such small spill shall be cleaned up, using spill absorbent materials such as Speedi-Dry and large absorbent wipes, which shall be available in a spill response kit located within the facility building.

23. As agreed to by Applicant, if a fuel spill occurs, Applicant shall temporarily seal with impermeable covers all storm drain inlets that might be reached by the spill.

24. As agreed to by Applicant, reload facility personnel, including the facility manager, shall be trained in emergency and spill response procedures as part of normal

operational practices, and would be expected to reach the spill area within 5 minutes of discovery. Such prompt action should prevent spills from reaching groundwater beneath or in the vicinity of the facility. Spill-containing materials shall be placed into a tight drum for off-site disposal by a licensed vendor.

25. As agreed to by Applicant, in the unlikely event of a large spill (that is over 10 gallons of fuel or other oil), Applicant shall comply with the reporting requirements of the Massachusetts Contingency Plan. Applicant's LSP/Environmental Engineer (See Condition 33) shall be on-site to provide assistance with response activities. Immediately upon detection of a spill event, a local spill response contractor working under a prearranged contract (24 hours-per-day, 365 days-per-year basis) shall be called and dispatched to the site. State emergency response officials also shall be contacted. It is anticipated that the spill response contractor and LSP/Environmental Engineer shall be available within the first hour of occurrence. Furthermore, absorbent booms and earthen barriers, as appropriate, shall be deployed immediately. Spilled oil shall be rapidly collected via use of absorbent materials, drummed, and disposed of off-site by a licensed vendor.

26. As agreed to by Applicant, all transloading activities shall be conducted on impervious and bermed surfaces. Exterior surfaces shall drain into retention ponds lined with impermeable bottom liners, which in turn shall drain to wetland areas to the south and west of the facility, away from Maple Meadow Brook Aquifer. Applicant shall comply with the applicable technical requirements of all laws and regulations that govern the discharge of surface water, including the surface and stormwater management practices identified in Condition 20 above. Interior building drainage shall be directed into the Massachusetts Water Resources Authority treatment system. Furthermore, Applicant shall ensure that all water coming into contact with facility materials, or present in materials processed during transloading materials, shall be discharged in a manner that is consistent with all applicable laws and regulations and in a manner that avoids the Maple Meadow Brook Aquifer.

27. As Agreed to by Applicant, Applicant shall comply with the Massachusetts Water Resources Authority's established technical standards and requirements regarding discharge into local sewers. In the event that discharges exceed the Massachusetts Water Resources Authority standards, in addition to Massachusetts Water Resources Authority compliance, Applicant shall place an equalization tank and/or oil-water separator in line between the floor drains and the receiving discharge line, which should bring the discharge to below typical Massachusetts Water Resources Authority limits, such as 100 parts per million for oil and grease. Applicant's LSP/Environmental Engineer shall review Applicant's operational plans and any revisions to those plans to ensure compliance.

28. As agreed to by Applicant, salt shall be stored and handled according to Best Management Practices ("Salt Institute Voluntary Salt Storage Guidelines for Distribution Stockpiles") to prevent release to surface water or groundwater. Applicant's LSP/Environmental Engineer shall review all plans and any revisions to those plans for the storage and handling of salt. The LSP/Environmental Engineer shall ensure that the groundwater is not adversely impacted.

29. As agreed to by Applicant, Applicant shall submit all staffing and operational programs to its LSP/Environmental Engineer to assure that staff training, programs, and plans adequately address the management of potential impacts to groundwater associated with an accidental release of chemicals or fuel.

30. As agreed to by Applicant, prior to the use of the containment system and berms, Applicant shall submit the proposed location and design of its containment systems and berms to its LSP/Environmental Engineer for review, approval, and a determination that there would be no effect on the Town of Wilmington's water supply or the Maple Meadow Brook Aquifer.

31. As agreed to by Applicant, Applicant shall submit all plans associated with operations to its LSP/Environmental Engineer for prior review and a determination that there would be no effect on the Town of Wilmington's water supply or the Maple Meadow Brook Aquifer. If requested to do so, Applicant shall submit its master operational plans and any revisions that have been approved by the Applicant's LSP/Environmental Engineer to the Town of Wilmington and shall respond, in a timely fashion, to comments from the Town of Wilmington regarding the operational plans and any revisions to the plans.

32. As agreed to by Applicant, Applicant shall submit any future plans associated with connecting the rail line to the Massachusetts Bay Transportation Authority Boston-Concord mainline to its LSP/Environmental Engineer for prior review and a determination of whether the plans comply with requirements governing the disturbance of wetlands. Applicant shall also consult with the appropriate office of the U.S. Army Corps of Engineers regarding any future activities or development in the project area that may affect wetlands.

Hazardous Materials/Waste Sites

33. As agreed to by Applicant, prior to implementation of any redevelopment activities, Applicant shall retain an LSP/Environmental Engineer to review all project-related redevelopment plans and procedures and revisions to those plans and procedures to assure that they include Best Management Practices recommended by the Commonwealth of Massachusetts.

34. As agreed to by Applicant, Applicant shall not interfere with Olin's continuing obligation to remediate the property and investigate conditions on and off the property (including continuing efforts to characterize existing soil conditions). Applicant shall allow continued access to any part of the property by Olin, the Massachusetts Department of Environmental Protection, the U.S. Environmental Protection Agency and/or any other agency with ongoing jurisdiction over remediation activities at the Olin Site. If it is determined that Applicant's operations are impeding remediation activities for whatever reason, including newly discovered information, Applicant shall remove or modify any development or operations to accommodate Olin's remediation efforts.

35. As agreed to by Applicant, Applicant shall not knowingly affect any groundwater as part of its development activities on the Olin Site without first submitting all required materials to the Massachusetts Department of Environmental Protection to obtain a Construction Remedial Action Measure (CRAM) in accordance with the Massachusetts Contingency Plan. Applicant shall comply with all applicable modifications suggested by the Massachusetts Department of

Environmental Protection. All excavation plans, including all comments and responses, shall be reviewed in advance by the Applicant's LSP/Environmental Engineer to assure compliance with all applicable local regulations designed to protect groundwater. If as part of any future development, groundwater disturbance occurs, Applicant shall proceed in accordance with the applicable requirements of the Massachusetts Contingency Plan.

36. As agreed to by Applicant, Applicant shall comply with all requirements set forth by the U.S. Department of Transportation dealing with the handling and transportation of hazardous materials.

37. As agreed to by Applicant, Applicant shall submit all training programs to its LSP/Environmental Engineer for review and approval to determine that protocols set forth in those programs conform to the objectives of all of mitigation measures included herein.

38. As agreed to by Applicant, Applicant shall not handle hazardous materials in the area located within the current boundaries of the Town of Wilmington Mapped Zone II or Ground Water Protection District. The Applicant shall comply with all Federal requirements and applicable state and local technical requirements governing the handling of hazardous materials at portions of the Olin property that are not located within the Town of Wilmington Mapped Zone II or Ground Water Protection District. Applicant shall submit all plans for the handling of hazardous materials to its LSP/Environmental Engineer to assure compliance with all applicable regulations designed to protect groundwater.

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CHAPTER 2
PUBLIC COMMENTS AND RESPONSES

This section summarizes the comments that SEA received on the EA from the public and various local and state agencies and presents SEA's responses. SEA prepared the responses to comments in accordance with CEQ guidance. The guidance provides that "if a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous."

Many commenters addressed similar or identical topics. SEA grouped such comments together and for each subject provides a summary of the comments to illustrate the commenters' concerns. Each summary is followed by SEA's response. SEA's responses clarify or correct information presented in the EA, explain and communicate government policy or regulations, direct commenters to information in the EA, or answer technical questions.

Many comments expressed concern over the adequacy of ongoing remediation efforts at the Olin site related to prior activities on the property by Olin. SEA also received a petition and comments expressing opposition to the Proposed Action, including form letters signed by several hundred local residents. Copies of the public comments are presented in Appendix A along with the names of the commenters. Some names were not clear and hence, are not listed.

Please note that no substantive comments were submitted addressing the sections of the EA on topography, geology, and soils, land use, socioeconomics, energy, or cultural resources; therefore, discussion of these issues is not included here. Also note that comments that address potential soil contamination are presented under Hazardous Materials/Waste Sites.

The comments and responses are organized into sections that follow the table of contents of the EA. An introductory summary describes in general terms the comments received for each subject.

NEPA Process Comments

Comment

Comments called for preparation of a full EIS in this proceeding.

Response

NEPA requires Federal agencies to prepare an EIS for "major Federal actions significantly affecting the quality of the human environment."[16] Under environmental regulations promulgated by the CEQ and the Board's own rules, the Board may first prepare an EA to determine whether to prepare an EIS.

Moreover, it is well settled that preparation of a full EIS is not required if the EA shows that, with mitigation, there will be no potential for significant effects. In this case, based on SEA's independent analysis of all of the available information, including additional supporting data provided by Applicant, a site visit by SEA, a meeting with local officials and congressional

[16] 42 U.S.C. 4332(2)(C)

representatives, comments received from the public and interested parties and Federal, state and local agencies, SEA concludes that the Proposed Action would not significantly affect the quality of the human environment if the recommended mitigation measures set forth in Chapter 1 of this Post EA in are imposed and implemented, plus any additional conditions for handling solid waste adopted pursuant to recommendations in Condition 13. Therefore, the EIS process is not warranted.

SEA considered the following in making its determination of no significant impact:

- The level of rail service, as proposed, is below the Board's environmental thresholds warranting detailed analysis.
- The Proposed Action should have little or no impact on residential areas.
- The Proposed Action would not have an adverse impact on drinking water sources.
- The Proposed Action would result in short-term negligible impacts on surface water.
- The Proposed Action would not directly impact wetlands.
- The Proposed Action would have no impact on land use, local zoning, coastal zone management, or prime farmland.
- No threatened or endangered species or species of special concern have been found to inhabit the proposed project area.
- Increased rail movements over the Eames Street crossing would have negligible impacts on delay and safety, as the trains would operate between 1:00 a.m. and 5:00 a.m. weekdays.
- The impact of an increase of 3 to 5 percent in Average Daily Traffic on the adjacent roadways is not considered significant.
- The noise associated with the construction and operation of the Proposed Action would have negligible impacts because there are no noise-sensitive receptors that would be affected.
- Emissions from trucks and rail would not be significant.
- The Proposed Action would have no impact on cultural resources.
- The Proposed Action would not impact any environmental justice communities.
- The environmental remediation activity on the Olin property remains the obligation of Olin.
- Applicant would not impede remediation work in any way.

- Implementation of the Proposed Action should result in a beneficial long-term impact on employment in the region.

- Implementation of the Proposed Action would result in a modest beneficial impact on the transportation of recyclable commodities.

Furthermore, the mitigation recommended in the Post EA would reduce or avoid any potential for significant environmental impacts associated with such issues as surface water, groundwater, the Maple Meadow Brook Aquifer, wetlands, and the transportation and handling of hazardous materials.

Comment

Comments complained that the Ayer Alternative location for the reload facility that was dismissed from analysis in the EA was an inappropriate location for consideration because of its distance from Boston. Comments indicated that NET, by using an unrealistic site as an alternative, has not made a good faith attempt to present a fair alternative analysis.

Response

As stated in Chapter 2 of the EA, SEA considered the No-Build Alternative (the No-Action Alternative) and three Build Alternatives (the Olin Alternative, the Tewksbury Alternative, and the Ayer Alternative). The Ayer location is properly discussed in the EA as a potential alternative location considered for constructing and operating the Proposed Action because it is an available site in the region. However, the Ayer location was eliminated from detailed analysis in the EA because of its extended distance from downtown Boston (approximately 30 miles). Applicant's need is for a facility in close proximity to metropolitan Boston. Moreover, the Ayer parcel did not have adequate acreage needed for the proposed rail and reload facilities and future development plans.

Comment

A comment indicated that, by identifying only two obscure pending actions at the Olin Property, the EA did not fully assess the cumulative impacts and claims that the Proposed Action has been segmented.

Response

In the EA, SEA identified two projects with the potential to result in cumulative impacts that Applicant may undertake at some point in the future: expansion of the proposed line (connecting the proposed line with a rail line owned by the Massachusetts Bay Transportation Authority) and development of a break bulk facility (transit shed/warehouse). Because the details of both of these actions are unknown at this time, SEA could only assess the cumulative impacts of these actions.

As part of the consultation process, SEA also contacted numerous state and local planning organizations requesting information on projects that could impact, or may be impacted by the Proposed Action. But SEA has not received information regarding other projects in the vicinity of the Proposed Action that would result in cumulative effects warranting analysis.

Comment

Other impacts, specifically to air quality and traffic, were raised as warranting detailed analysis under the cumulative impact section.

Response

The addition of one train per day, while relatively low and less than the Board's threshold for an in-depth environmental analysis, would nevertheless constitute a small incremental increase over the current levels of train traffic on the Massachusetts Bay Transportation Authority line over which Applicant's train would operate. As explained in the EA, this would result in a commensurate negligible increase in air quality and traffic impacts during the time the one train per day would operate (between 1:00 a.m. and 5:00 a.m.). In the worst case, truck movements associated with the Proposed Action would add only a 5 percent increase in Average Daily Traffic on local roads, and result in modest impacts in local air quality. Moreover, SEA notes that the Massachusetts Highway Department, Bureau of Transportation, Planning and Development, in its letter of October 24, 2003, reviewed Applicant's current redevelopment proposal for the Olin Site and found that the traffic impacts (the addition of 400 truck trips per day) associated with the Proposed Action would be minimal (see Appendix C of the EA). For the reasons stated above, SEA concludes that the impacts associated with air emissions and rail and truck movements when added to current local conditions, would not result in any significant cumulative impacts.

Transportation and Safety

Summary

Comments on the Transportation and Safety discussion in the EA focused on the residential nature of the community and stated that the EA ignored the impacts of increased traffic to the standard of living of the local residents. Specific comments included those set forth below.

Comment

Comments indicated that they did not agree with the conclusions presented in the EA that an additional 400 truck trips per day would not significantly impact the existing Level of Service ratings of certain local roads and intersections in the area. Additionally, comments indicated that 400 truck trips a day would exceed the capacity of the local roads. Comments indicated that traffic flow and volume information presented by Applicant and used in the EA was from a 2000 traffic study based on 1998 or earlier data that may not be relevant today and that the data was not independently verified.

Response

In the EA, SEA thoroughly analyzed potential traffic related impacts within the study area. As part of its analysis, SEA examined the effect on the existing local vehicular traffic movements of the worst case scenario—400 truck movements per day or an increase in 3 percent to 5 percent Average Daily Traffic—to determine the effect of truck traffic generated by the Proposed Action. SEA determined that the addition of approximately 400 truck trips per day on area roadways and one round-trip train per day, operating between 1:00 a.m. and 5:00 a.m., with up to 25 rail cars in length crossing Eames Street, would result in some, but not significant, adverse impacts to the local road network. Significantly, SEA's conclusions are fully consistent

with the views of the Massachusetts Highway Department, which concluded that "the traffic impacts associated with this project would be minimal."

The traffic study data used in the EA to project Average Daily Traffic for 2005 was generated by an independent consulting firm, Vanasse & Associates, and was referenced as such in the EA. SEA believes that the data used in the EA is representative of the existing Average Daily Traffic on Eames Street and Woburn Street south of Route 129.

Comment

Comments indicated that the EA does not discuss how trucks would be weighed on-site to comply with weight capacities of the Eames Street bridge.

Response

Section 2.2.1.1 of the EA states that Applicant plans to install in-bound and out-bound truck scales.

Comment

Comments indicated that the use of the I-93 and I-95 intersections was not adequately analyzed. Comments also indicated that the safety impacts associated with trucks turning from Eames Street onto Woburn Street, where currently large trucks are forced to cross the centerline of the street in order to negotiate the hairpin turn and sometimes travel "up to 130 to 165 feet from the intersection before fully returning to their own lanes," should have been more fully analyzed in the EA.

Response

As discussed above, the Proposed Action was reviewed by the Massachusetts Highway Department, which concluded that the traffic impacts associated with the Proposed Action would be minimal, and did not recommend additional traffic review.

SEA agrees that the Proposed Action would contribute to the poor existing conditions at the Eames Street and Woburn Street intersection. But the traffic problems at the intersection are pre-existing conditions and would continue independent of the Proposed Action. The Board typically does not assess in its environmental documents or impose mitigation for pre-existing environmental conditions. As a government agency, the Board has limited authority to impose mitigation. The Board cannot impose mitigation with respect to matters that are outside of its regulatory control, such as the specific route that trucks may use to access or depart from the proposed facility. Thus, the Board's practice consistently has been to mitigate only those impacts that result directly from proposed actions. Although the Board could not unilaterally impose mitigation here, Applicant, as voluntary mitigation, has agreed to commit $50,000 toward the cost of improvements at the Eames Street and Woburn Street intersection. A condition that would bind Applicant to that consensual mitigation is included in the Post EA.

Comment

Comments indicated that potential safety issues associated with additional truck traffic, including the movement of "chemically explosive trucks," were not fully analyzed in the EA. Comments also contended that limited police and emergency response resources of the community were not addressed in the EA.

Response

As stated in the EA, the truck traffic generated under the Proposed Action would increase Average Daily Traffic on the local roads, under worst case conditions, by approximately 3 to 5 percent. Given this small percentage increase in traffic, the corresponding increase in accident potential would also be small.

Applicant stated in its petition for exemption and supporting documents that it would haul only liquid chemicals which are nonhazardous and nonexplosive as defined by the Resource Conservation and Recovery Act, which regulates solid and hazardous waste. Applicant would be subject to the reasonable requirements of other applicable laws and regulations that apply to the handling and transportation of liquid chemicals by truck. SEA notes that the U.S. Department of Transportation has specific rules regulating the movement of hazardous materials by truck. Also, police and emergency response organizations that service the industrial activities in the Eames Street area have not complained that there would be a lack of available resources to deal with potential project-related accidents and emergencies.

Noise

Summary

Comments on the noise discussion in the EA indicated that alternate noise standards should be used and that particular receptors were closer to the property than described in the EA. In addition, some comments indicated that the noise associated with the Proposed Action was not fully disclosed or analyzed. The specific comments include:

Comment

Comments indicated that the EA should have used the 1990 Massachusetts Department of Environmental Protection Noise Policy criteria (10 decibels (dB) above background, measured at the property line of the site) for the impact assessment. The Town of Wilmington Board of Health commented that its local noise policy does not rely on a decibel standard but requires the abatement of any noise considered to be a nuisance to the community and that this is more restrictive than the MADEP policy.

Response

Consistent with the Board's rules at 49 C.F.R. 1105.7(e)(6) and its uniform practice in other cases, SEA used the Day-Night Average Noise Level (L_{dn}), which is the day-night equivalent sound level, to analyze community noise. L_{dn} is a measure of cumulative noise over a 24-hour period, adjusted to account for the perception that noise at night is more bothersome than the same noise during the day. Further, the Board's rules specify that the noise analysis should determine the number of noise-sensitive receptors (residences, school, hospitals, and churches) in two cases: an increase in community noise exposure as measured by L_{dn} of 3 A-weighted decibels (dBA) or more and an increase to a noise level of 65 dBA L_{dn} or greater. SEA believes that application of the Board's noise regulations, which apply to freight rail activities, was fully appropriate here.

SEA conducted an analysis of potential noise impacts that could result from the new truck traffic related to the proposed rail transportation and the related- reload facility. As stated in Section 4.2.1 of the EA, noise impacts associated with the Proposed Action are expected to be

insignificant. Specifically, no sensitive receptors would be affected, the community noise exposure would increase by no more than 1 dBA (which is less than the Board's standard of 3 dBA) and in this case the 65 L_{dn} contour extends only 20 feet from the proposed rail line. The Board lacks jurisdiction over truck routing and operations of truck drivers and therefore cannot impose mitigation regulating trucking activities. Finally, SEA notes that even though the noise impacts of this project would not be significant, Applicant has agreed to noise mitigation to further reduce the potential for adverse noise impacts.

Comment

Comments indicated that the EA cites no standard for the use of the distance 1,300 feet to the nearest residence to measure noise impacts and that this distance is arbitrary**.** The comment noted that the EA should double the 1,300 feet standard (2,600 feet) at which impacts to the nearest receptor would occur.

Response

As stated in Section 4.2.1 of the EA, the "closest sensitive noise receptors include residential neighborhoods that are located approximately 1,300 feet from the proposed project site." The 1,300 feet was merely stated as a distance to the closest sensitive receptors.

Comment

The comment also noted that there is R-20 residential-zoned land less than 350 feet to the east of the proposed project site. The comment states that some of the 26 residents who live 1,300 feet from the project site live within this R-20 district. The comment notes that there is undeveloped land in this district and it has yet to be determined how many homes would eventually be impacted.

Response

The R-20 district is approximately 350 feet from the southern Olin property boundary. Construction and operation activities for the Proposed Action would occur on the northern segment of the property boundary. In any case, the nearest residences within this zone are 1,300 feet from potentially noise-generating activities that would occur under the Proposed Action. The R-20 district is 350 feet from the portion of the Olin property that Olin will place under a conservation restriction as part Olin's remediation plan with Massachusetts Department of Environmental Protection.

Under the conservation restriction, Applicant would be prohibited from developing any portion of the conservation area. The conservation restriction would be put in place on approximately 20 acres of the southern-most segment of the property. Moreover, several industrial warehouses are also located on Jewel Drive between the R-20 district and the proposed project site and should provide additional noise shielding noise from the Proposed Action, thereby reducing noise levels at these residences.

SEA is not aware of any proposed development plans within the undeveloped sections of the land zoned R-20. At this time, it would be impossible for SEA to meaningfully project noise impacts on this area absent any concrete information on specific development plans. SEA did not evaluate environmental impacts of potential development because it is too speculative to provide meaningful information.

Comment

Comments noted that the impact of noise from rail cars during the hours of 1:00 a.m. to 5:00 a.m., when background noise would be much lower, as well as noise associated with the operation of the transfer facility (loading and unloading of materials), should be fully analyzed in the EA.

Response

As discussed above, consistent with its practice in other cases, SEA used the Day-Night Average Noise Level (L_{dn}), which measures noise over a 24-hour period and adds a 10-decibel penalty to noise occurring between the hours of 10:00 p.m. and 7:00 a.m., to account for people's increased sensitivity to noise at night. SEA's approach is to identify noise sensitive land uses adjacent to the rail line where the projected change in operations could result in noise exposure increases that meet or exceed Board thresholds.

The proposed project site is located in an industrial area that is zoned for industrial use. The closest sensitive noise receptors include residential neighborhoods that are located approximately 1,300 feet from the proposed project site. In addition, the Boston and Maine Railroad train that would access the reload facility currently operates on the Boston and Maine Railroad spur. The overall increase in daily train traffic associated with the Proposed Action is one round trip train per day. The operation of one train per day over the Eames Street grade crossing is likely to create a 65 L_{dn} horn-noise contour that extends no more than 250 feet from the rail line at the approaches to the crossing. No residences are located within this noise contour. The 65 L_{dn} wayside noise contour associated with the operation of one train would extend approximately 20 feet from the rail line and no sensitive receptors would be affected.

With regard to SEA's analysis of potential noise impacts resulting from the reload facility operations, SEA considered noise generated by locomotive movements, locomotive idling, truck idling, and equipment. The results of SEA's analysis found that no sensitive receptors, including residences, would experience a noticeable increase in noise levels. In other words, no sensitive receptors would be adversely affected. Applicant also has agreed to the imposition of noise mitigation in the case. For all of these reasons, the study of noise has been fully adequate, and no additional noise analysis is warranted.

Comment

Comments indicated that the level of detail for analyzing truck noise should be the same as the level of detail for rail car noise. Comments were directed at increased noise generated by increased truck traffic along Eames Street near the intersection with Woburn Street.

Response

As indicated in the EA, under the Proposed Action, a maximum of 400 truck trips would be added to the existing traffic on Eames Street. The increase in truck noise associated with this increased volume of trucks would then be less than 1 decibel. This relatively small increase in noise is due to the already high base level of truck traffic. A 1 dBA increase is considered insignificant since a 3 dBA increase is just noticeable to most people.[17]

[17] Highway Traffic Noise Analysis and Abatement Policy and Guidance, U.S. Department of (continued...)

Comment

Comments noted that the impacts associated with idling locomotives and trucks were not fully analyzed.

Response

Applicant would acquire one switch locomotive to move the rail cars over the proposed rail line during daytime operating hours. There is a potential for daytime idling of the switch locomotive while waiting to load and unload railcars. The Federal Railroad Administration limit for idling locomotive noise (see 40 CFR 201) is 73 dBA at 100 feet. Assuming one locomotive and 400 daily truck trips, the 65 L_{dn} noise contour associated with these activities would be 200 feet away from the reload facility. (These calculations are based on U.S. Environmental Protection Agency and Federal Railroad Administration data.[18]) No noise sensitive receptors are located within this noise contour. The Board has imposed mitigation requiring the Applicant to comply with Federal Railroad Administration regulations (49 CFR Part 210) establishing decibel limits for train operations.

Air Quality

Summary

Comments on the air quality discussion in the EA question the validity of air quality data and the effects on local air quality from the additional truck traffic associated with the proposed facility. The specific comments include:

Comment

Comments questioned the estimate of duration of construction time used to calculate air emissions, and indicated that it may be too short. Comments indicated that data was not independently verified and that the description of construction plans was too general to allow for an accurate construction time estimate.

Response

Air quality impacts resulting from the Proposed Action, including any impacts on the local communities, were adequately studied in the EA. SEA's analysis, in Section 4.3 of the EA, properly concluded that no adverse impacts to air quality would result from the Proposed Action. Commenters have not shown that SEA's analysis is incorrect or that additional analysis is warranted. SEA notes that the level of proposed rail activity, one train per day, is below the Board's thresholds for environmental analysis for air quality impact.

The construction time period used to analyze construction emissions in the EA was four months. The construction emissions presented in the EA show that 4.14 tons of NOx would be

[17] (...continued)
Transportation, Federal Highway Administration, Office of Environment and Planning, Noise and Air Quality Branch, Washington, D.C., June 1995.

[18] "Background Document for Final Interstate Rail Carrier Noise Emission Regulation: Source Standards," EPA 550/9-79-21, Dec. 1979, "Handbook for the Measurement, Analysis and Abatement of Railroad Noise," DOT/FRA/ORD-82/02-H, January 1982.

emitted during a four-month construction period. This is well below the 50-ton threshold established by the U.S. Environmental Protection Agency, above which emissions are considered significant. Even if the EA had extended the construction period to six months (or even a year) emissions would still be well below the 50-ton threshold. Therefore, no additional analysis is required.

Comment

Comments noted that the EA fails to analyze emissions from on-site truck traffic with the level of detail given to locomotive emissions. Comments questioned the basis and the objectivity of the assertion that even though local truck traffic would increase, regional truck traffic would decrease based on more commodities being shipped by rail instead of by truck. The Wilmington Board of Health indicated that when examined locally instead of regionally, the overall air pollution impacts would increase in Wilmington.

Response

SEA's analysis, in Section 4.3 of the EA, properly concludes that there would be a small adverse air quality impact experienced locally as a result of this project, but that regional emissions from trucks would remain essentially the same. Air quality typically is studied on a regional basis and the commodities that would be handled under the Proposed Action are currently transported on trucks through the same region. Therefore, SEA's analysis in the EA is fully adequate and no additional analysis is warranted.

Water Resources

Summary

Comments on the water resources discussion contained in the EA contend that some of the baseline data is incorrect and that there is a lack of information about surface water flow features (other than wetlands) that prevented a full analysis of potential water impacts. Other comments question the analysis of the impacts on groundwater, which has already been degraded by past activities at the location of the Proposed Action. The specific comments include:

Comment

Comments noted that Figure 1-2 of the EA does not illustrate the Maple Meadow Brook Aquifer and the town's Ground Water Protection District.

Response

The EA presents a description of the location of both the Maple Meadow Brook Aquifer and the Wilmington Ground Water Protection District in Section 3.5.2, Drinking Water Sources, pages 3-7 and 3-8.

Comment

Comments indicated that the 100-year floodplain delineation referenced in the EA is out of date and does not accurately characterize recent flooding events along the Aberjona River. Comments contend that there is an unknown risk associated with existing contaminant transport and deposition in these flood-prone areas, as well as potential contaminant transport and deposition of materials associated with the Proposed Action.

Response

As presented in the Section 3.5.5 of the EA, Floodplains, SEA reviewed the most recent Flood Insurance Rate Map issued by the Federal Emergency Management Agency (FEMA), which was dated June 2, 1999. Regarding existing contamination, SEA acknowledges that the Olin site is contaminated; however, as explained in the EA, the proposed redevelopment of the site under the Proposed Action would not interfere with the ongoing investigation or remediation of the Olin site and would not affect the risk of existing contamination being transported and deposited in flood-prone areas. Regarding potential for uncontrolled contaminant transport, SEA evaluated the activities associated with the Proposed Action and properly concluded that such activities would have negligible impacts on groundwater (Section 4.5.1, Groundwater, pp 4-12 and 4-13). Extensive groundwater mitigation also is included in the Post EA.

Comment

Comments noted that requirements for permits for stormwater management at construction sites and estimates for stormwater flows were not included in the EA, and recommended that the Board require compliance with stormwater permitting requirements of the U.S. Environmental Protection Agency, not the U.S. Army Corps of Engineers.

Response

Comment noted. The mitigation recommended in the Post EA would require Applicant to adhere to the reasonable requirements of the U.S. Environmental Protection Agency regulations governing stormwater discharge, including requirements related to the National Pollutant Discharge Elimination System permit, so long as the requirements are not being applied in such a way that it would unduly restrict Applicants's operations.

Comment

The City of Woburn expressed concerns that, with the cessation of five municipal wells in Wilmington, a substantial amount of water is no longer being drawn from the aquifer but may be flowing instead toward the Aberjona River Basin. Other comments add that Massachusetts Department of Environmental Protection has stated that there are chemicals of concern entering Halls Brook, which flows into the Aberjona River. Comments argue that the EA did not fully analyze or address the threats to residents of Wilmington and Woburn from contaminant migration throughout the Aberjona River Basin. A comment claimed that potential spills or leakage associated with the operation of the Proposed Action would endanger the Aberjona Watershed and the people of Wilmington and Woburn.

Response

The contamination of municipal water wells in Wilmington is one aspect of Olin's remediation activities associated with its former chemical operations at the site. As stated in the EA and this Post EA, responsibility for remediation lies with Olin and is regulated and overseen by Massachusetts Department of Environmental Protection. The EA also properly concluded that the Proposed Action, including the reload facility, would have no impact on the ongoing environmental remediation of the site. The remediation would continue and Applicant has stated that Olin, Massachusetts Department of Environmental Protection, and U.S. Environmental Protection Agency would have full access to the site for the purpose of ensuring that remediation continues unimpeded. If it is determined that Applicant's operations are impeding remediation activities for any reason, including newly discovered information, Applicant has agreed as

voluntary mitigation to remove or modify any development or operations to accommodate Olin's remediation efforts. Applicant's voluntary mitigation is included in the Post EA.

Furthermore, Applicant states that it does not intend to handle hazardous materials, with the exception of limited amounts of propane, at the proposed project site. All loading and unloading activities would occur over an impervious and bermed surface which would drain into the local sewer system. Any railcar or truck cleaning would also occur over an impervious surface with impervious berms. Applicant would not clean any rail cars or trucks on-site that previously handled waste products. Drains from cleaning areas would discharge to the municipal wastewater treatment system. Waste handled at the reload facility would not come in contact with storm or surface waters. A condition to that effect is included in the Post EA.

Comment

Many comments expressed concern about the potential for groundwater contamination from cumulative impacts associated with breaches of containment systems and fuel or chemical spills. Commenters expressed concerns about the potential spill or release of salt onto existing contaminated soils.

Response

In addition to the responses discussed above, Applicant has stated that all maintenance and fueling would be conducted on paved areas with impervious berms. Should any spills or releases occur, Applicant would use clean-up and containment procedures required by Massachusetts Department of Environmental Protection and other applicable regulations. In addition, Applicant would prepare emergency response plans and provide such plans to the relevant state and local entities, including the Massachusetts Department of Environmental Protection. Applicant would have on-site personnel trained in emergency spill response. Furthermore, emergency spill response measures would be in place to prevent any spills from affecting surface or ground water. Applicant has stated that it has hired a LSP/Environmental Engineer to review all emergency release plans, clean-up plans, stormwater management plans, training plans, and operational plans. As for salt storage, Applicant has stated that salt would be stored and handled according to best management practices, including storage of salt on an impervious surface with an impervious berm in a covered area, and the use of silt fences or hay bales, as appropriate. All storage plans would be reviewed by Applicant's LSP/Environmental Engineer to prevent release of stored commodities to surface or ground water. SEA's recommended mitigation requires Applicant to take these steps.

Comment

Comments indicated that the EA contained no analysis of whether mitigation measures, specifically "Best Management Practices" would be adequate for surface water protection.

Response

SEA evaluated the activities associated with the Proposed Action and concluded that such activities could result in adverse short-term negligible impacts on surface water. As stated in previous responses, the Post EA contains conditions requiring Applicant to obtain appropriate approval from other agencies related to the protection of surface water.

Biological Resources

Summary

Comments on the Biological Resources discussion presented in the EA focused on wetland permits and the establishment of a wetland conservation area on the Olin property. The specific comments include:

Comment

Comments asked for stronger language in the mitigation conditions to require Applicant to comply with regulations and permit requirements of other agencies governing disturbance of wetlands. Comments noted that the EA omits a detailed discussion of the conservation restriction placed on the wetlands associated with the south ditch.

Response

As stated in Section 4.5.4 of the EA, SEA consulted with the U.S. Army Corps of Engineers (Corps of Engineers) concerning the potential of the Proposed Action to impact wetlands. The Corps of Engineers reviewed the Proposed Action and determined that there would be no impact to wetlands and that formal approval from the Corps of Engineers would not be required. Therefore, SEA has limited its recommended mitigation measures to implementation of Best Management Practices, which would address any potential indirect effects on wetland areas. In addition, Applicant has agreed to submit plans for any future activities that could impact wetlands to its LSP/Environmental Engineer for review and compliance with the Corps of Engineers regulations governing disturbance of wetlands. A condition to that effect is included in the Post EA.

The implementation of a conservation restriction on the southern portion (approximately 20 acres) of the property was described in Section 4.6 of the EA. The conservation restriction plan was developed by Olin and Massachusetts Department of Environmental Protection as part of remediation efforts for the Olin Site, and it is not part of the Proposed Action. Applicant has agreed to abide by the conservation restriction and no development would occur in that area.

Hazardous Materials and Waste Sites

Summary

Comments on the Hazardous Materials and Waste Sites discussion presented in the EA focused on the reuse of a contaminated parcel of property that is undergoing remediation, and expressed concern about development of the property until a full analysis of the property is completed. Comments also expressed general opposition to the proposed reload facility because of the materials that may be handled at the facility, the chance of spills and releases from the proposed facility, and how such materials and any spills or releases would interact and complicate ongoing remedial activities.

Comment

Comments contended that any development plan for the Olin property should not be completed until a full analysis of all identified impacts and all potential contaminants is completed and a full remediation plan is in place. Additionally, the comments expressed concern that redeveloping an already contaminated site unnecessarily complicates the

responsibility and attendant liability for the site clean-up now and in the future, should any new contaminants be found. Comments indicated that Massachusetts Department of Environmental Protection has imposed restrictions on development and that it is in the process of transferring regulatory authority over the Olin property to the U.S. Environmental Protection Agency. Comments claimed that construction of buildings, track, and facilities on the property could inhibit or interfere with the ongoing remedial investigations and clean-up efforts and would complicate efforts to understand the breadth of contaminants already present in the groundwater and how they operate and interact with one another. Comments called for more stringent language to require that the "activities and facilities associated with the proposed project not interfere with continuing efforts to characterize the relatively complex existing environmental impacts and subsequent remedial efforts."

Response

SEA understands that there is concern about how the development of the Olin property would affect the ongoing site characterization and remediation activities. As stated in Section 1.4.1 of the EA, Description of the Proposed Project Site, Applicant is bound by law (and by SEA's recommended mitigation) not to impede the remediation of the entire property, including the portion it attends to acquire. Furthermore, Applicant stated in its petition for exemption that, if it were to impede the ongoing remediation work or add to the environmental problems at the Olin property, it would be joined with Olin as responsible for the cost of remediation. This is a substantial incentive for Applicant not to impede the ongoing remediation.

The EA explains in Section 4.8.1, Remedial Action, that Applicant would ensure that all sampling locations remain accessible for sample collection and would not disrupt groundwater treatment. In addition, Applicant has stated that the proposed development at the property has been determined by Olin, as well as Olin's independent LSP/Environmental Engineer, not to interfere with Olin's obligations to investigate and remediate the contamination on the Olin property. Applicant has agreed to actively work with Olin to accommodate any current or future remediation activities involving Olin in the development and design of the Proposed Action. Applicant has advised the Board that it would permit continued access to any part of the property by Olin, Massachusetts Department of Environmental Protection, U.S. Environmental Protection Agency or any other agency with jurisdiction over remediation at the Olin property. Mitigation to that effect is included in the Post EA.

Regarding the restrictions on development of the Olin site, the EA provides a full description of such restrictions in Section 3.8.1.4, Actions Required Before Olin Site Redevelopment. Also, a copy of the letter submitted by Massachusetts Department of Environmental Protection describes the actions that would be completed by Olin prior to redevelopment of the site by NET (or any one else). The letter is included in Appendix C of the EA. Specifically, notwithstanding this project, Olin must continue to comply with State regulations regarding remediation of the entire site. Therefore, the Construction Remediation Action Module, which would be submitted to and must be approved by Massachusetts Department of Environmental Protection prior to commencement of any development of the property, would not be approved if the Massachusetts Department of Environmental Protection determines that there is an unreasonable risk. Massachusetts Department of Environmental Protection would have oversight of the continuing clean-up of this site. In short, there is simply

no reason to believe that Applicant's development activities would obstruct, delay, or affect the ongoing remediation efforts at the Olin site.

Comment

Comments expressed concern over the unknown risks inherent with transporting chemicals to a site already contaminated with chemicals, especially when a carcinogen escaped detection for years despite some environmental testing. Comments expressed concern that the Proposed Action could potentially expose materials like construction debris or nonhazardous chemicals to mix with hazardous materials already present on the site and pose unknown risks for any new mixture. Comments question who would be accountable for clean-up of any new contaminants. In addition, comments expressed concern regarding the adequacy of the containment berm, indicating that there is no information as to the structural design of the containment system or its capacity. A comment expressed concern that maintenance of the on-site equipment may lead to releases or spills and complicate the ongoing remediation activities. Comments expressed concern that personnel qualifications and training, and the implementation of spill prevention and response plans were not described or analyzed with enough detail in the EA to determine their adequacy as mitigation measures, and further stated that training should be required for all personnel.

Response

SEA recognizes that commenters are deeply concerned over how the materials associated with the Proposed Action could affect or combine with the existing onsite contamination and ongoing remediation efforts. However, SEA believes that ample precautions have been taken to minimize to the extent possible the chance of NET's transportation-related activities adding to the contamination problems at the Olin site. Chapters 1 and 2 of the EA, as well as the supplemental information provided by Applicant, describe in detail the design and operation of the proposed reload facility, cargo transfer procedures, and the extensive planning that has occurred takes into account the specific characteristics and unique circumstances related to this site and its history. For example, Applicant explains that all transload activities would be performed in a covered area on an impervious surface with impervious berms designed to contain any spills. Any spilled material would be cleaned by appropriately trained personnel[19] and wash water within the bermed area would be directed to the sanitary sewer system. In addition, Applicant has stated that all maintenance and fueling would be conducted on paved areas with protective impervious berms and drains. Applicant has agreed to follow procedures required by Massachusetts Department of Environmental Protection and ensure that any spills or releases would be cleaned up according to all applicable Federal, state, and local regulations. In addition, Applicant would prepare emergency response plans and provide the plans to Massachusetts Department of Environmental Protection and local entities. Personnel trained in emergency spill response measures would be in place to prevent any spills from affecting surface or ground water. Applicant has stated that it would hire a LSP, with dual qualifications as a professional environmental engineer, to review all plans for emergency release, clean-up, stormwater management, training, and operations. Finally, mitigation requiring Applicant to implement these proposals is set forth in the Post EA.

[19] At a minimum, clean-up personnel would be trained in accordance with Occupational Safety and Health Administration/U.S. Environmental Protection Agency training requirements for workers performing hazardous waste site functions, in accordance with the provisions of 29 CFR 1910.120.

Comment

Comments expressed concern that the list of materials to be handled at the site is too vague and general, leaving the door open for hazardous material transport and handling without the community's knowledge. Comments expressed concern over the cumulative impact of releases or spills associated with the proposed facility on past soil contamination. A number of comments expressed concern on the list of mitigation measures, and questioned why mitigation measures require compliance with laws governing the "handling and disposal of waste materials," but not the "transport and handling of hazardous materials," and called for mitigation measures to include spill prevention planning and construction of suitable containment structures.

Response

Section 1.4.3 of the EA provides a summary of the commodities that would be handled at the proposed facility. Commodities are expected to consist of aggregates (rock), brick, coal, cement, construction debris, contaminated soils, liquids chemicals (all of which would be non-hazardous and non-explosive),[20] lumber, newsprint, non-hazardous waste, paper products, plastics, propane, recycled paper and plastic, sand, gravel, scrap steel, steel, stone, wood products, and any other products that could be transported in intermodal containers. Except for propane, aggregates, lumber, sand, salt and gravel, and stone, none of these commodities would be stored, processed or handled at the reload facility other than during the reload process itself. Applicant states that insignificant quantities of propane would be transported and kept on-site for use in repairing and maintaining railroad engines, cars, and equipment. Therefore, further analysis of hazardous materials transport and handling is not warranted.

Applicant would be required to prepare, prior to the commencement of its operations, a spill prevention and contingency plan for addressing hazardous materials incidents. Furthermore, Applicant would be subject to the reasonable requirements of the U.S. Department of Transportation's hazardous material regulations (governing the movement of hazardous materials). Furthermore, several other Federal agencies have established requirements for hazardous materials transportation, as well as for emergency planning and spill response for hazardous materials. These agencies include the U.S. Department of Transportation (regulatory and enforcement powers of the Federal Railroad Administration at 49 CFR 200 through 240 and Research and Special Programs Administration at 49 CFR 171 and 179), U.S. Environmental Protection Agency (spill prevention and clean-up at 40 CFR 263) and the Occupational Safety and Health Administration) (emergency response and clean-up operations for release at 29 CFR 1910.120). Applicant would be required to comply with the reasonable requirements imposed by those agencies under these regulations.

[20] Applicant states that examples of non-hazardous and non-explosive chemicals that could be transported over the proposed line are soda ash and calcium carbonate. Neither of these non-hazardous chemicals are regulated for shipping by U.S. Department of Transportation.

Comment

Comments expressed concern over the lack of detailed information about the nature of solid waste, specifically construction waste[21] that would be handled at the proposed facility, and that the EA did not properly assess the potential permit requirements that would be associated with the Proposed Action. Comments raised concerns about the development of a municipal solid waste facility at the proposed site. Massachusetts Department of Environmental Protection commented that it and the Wilmington Board of Health have regulatory authority over the handling of solid waste and depending on how solid waste is handled, both a Site Assignment and a Solid Waste Permit could be required before the reload facility could be constructed and operated.

Response

Applicant stated in its petition for exemption that it intends to handle solid waste at the reload facility. Applicant further explains in supplemental information[22] provided on September 30, 2004, that three types of transloading of solid waste from truck to railcars could occur at the reload facility: container transloading (enclosed container lifted off a truck chassis and placed onto a railcar), bale transloading (open-topped truck trailer with tarp cover loaded and unloaded in an enclosed area) and loose material transloading (trucks with roll-off containers; dump trucks or compactor trucks unload materials in an enclosed area). According to Applicant, all trucks would exit the enclosed transloading structure covered.

The Massachusetts Department of Environmental Protection, in a letter dated November 3, 2004,[23] notified Applicant that based on NET's description of the proposed handling of solid waste, Massachusetts Department of Environmental Protection has determined that NET's planned bale transloading and loose material transloading, as well as the grinding, baling and container-loading operations, are solid waste handling activities for which the facility should be required to obtain a site assignment from the local Board of Health as a solid waste handling facility and a solid waste permit to construct and operate from Massachusetts Department of Environmental Protection pursuant to the Massachusetts solid waste management regulations, 310 CMR 19.000. Massachusetts Department of Environmental Protection also states in its letter that the construction and demolition waste material that NET proposes to handle is likely to be contaminated with or contain materials such as asbestos, lead paint and arsenic. In addition, Massachusetts Department of Environmental Protection expresses concerns regarding impacts to air and groundwater from grinding operations. Massachusetts Department of Environmental Protection maintains that if solid waste materials are handled at the reload facility, both Massachusetts Department of Environmental Protection and the local Board of Health would have regulatory authority over the facility.

[21] Demolition and construction waste means any waste materials and rubble resulting from the construction, remodeling, repair or demolition of buildings, pavement, roads or other structures. Demolition and construction waste includes, but is not limited to, concrete, bricks, lumber, masonry, road paving materials, rebar and plaster.

[22] Copies of Applicant's supplemental material of September 30, 2004, was submitted to the Board, with copies to Deutch Williams, Counsel for the Town of Wilmington and Ellen Herzfelder, Secretary, Executive Office of Environmental Affairs, Massachusetts Department of Environmental Protection.

[23] Victoria Rutson, Chief of SEA, was cc'd on the letter.

Massachusetts Department of Environmental Protection has not asked SEA to impose a condition requiring NET to obtain solid waste permits from the State or other state or local approvals in this case. But Massachusetts Department of Environmental Protection's suggestion that it and the local Board of Health have regulatory authority over the facility—and can require NET to seek a site assignment from the local Board of Health and a solid waste permit from Massachusetts Department of Environmental Protection prior to transloading solid waste materials at the reload facility—fails to take into account the extremely broad express federal preemption that applies in this case. As discussed in detail above in Section ES.1.2, in 1995 Congress enacted a broad Federal preemption provision that expressly makes the Board's jurisdiction "exclusive" for all transportation by rail carriers, including the facilities and structures that are an integral part of that transportation. 49 U.S.C. 10501(b); 10906; 10102(9). Moreover, the statute expressly provides that "the remedies provided under this part are exclusive and preempt the remedies provided under Federal and State law."

Section 10501(b) does not permit dual State and Federal regulation of railroads or activities related to rail transportation at railroad facilities. Accordingly, the case law interpreting this provision (see the cases cited in Section ES.1.2 above) consistently has found that state and local permitting or preclearance requirements, including zoning ordinances and environmental or land use permitting requirements, are preempted. That is because, by their nature, these requirements interfere with interstate commerce due to the ability to deny or unduly delay the railroad's right to construct facilities or conduct its operations.

In order to qualify for the broad express preemption, the activity in question must involve rail transportation or facilities involved in rail transportation, as defined in Section 10102(9). Here, the available information indicates that the proposed transloading of solid waste materials to or from trucks to railcars that would take place at the reload facility would be part of NET's railroad operations. As a result, NET would be exempt from traditional permitting, zoning, and land use processes for its proposed handling of solid waste materials.

As discussed in the Executive Summary, however, NET would not necessarily be exempt from other generally applicable laws. States retain their police powers and can take appropriate actions to protect public health and safety so long as their actions do not serve to regulate rail operations or unreasonably interfere with interstate commerce. For example, a state or local government could issue citations or seek damages if harmful substances are discharged during a railroad construction or upgrading project, or during railroad transportation (including operations at the reload facility). Similarly, non-discriminatory application of state and local requirements such as building and electrical codes, generally would not be preempted. Sometimes, environmental concerns can be addressed through consensual measures worked out between the railroad and the community, or under other Federal environmental laws, such as the Clean Air Act and the Clean Water Act, which continue to apply to railroads to the extent these laws would not unreasonably interfere with interstate commerce. Finally, State and local entities like Massachusetts Department of Environmental Protection can raise their environmental concerns before the Board during the environmental review process under NEPA for consideration in cases like this one that require a license from the Board.

As noted in Chapter 1 of this Post EA, extensive conditions have been added to the mitigation in the EA to address concerns about handling hazardous material and wastes at the

reload facility. Nonetheless, given the nature of the concerns that Massachusetts Department of Environmental Protection has raised here, conditions requiring consultations with, or notice to, the appropriate State agencies prior to institution of the proposed transloading of solid waste at the reload facility, inspections (in addition to those already contemplated in SEA's final recommended conditions), the establishment of particular protocols or standards for those transloading operations, and an operational review process to ensure that all hazardous materials are handled properly may be appropriate so long as they would not interfere with the railroad's right to conduct its operations.

To date, however, the Massachusetts Department of Environmental Protection has not specified in this case what specific requirements it believes should be taken to mitigate potential harms and protect the environment and public health and safety during the proposed transloading of solid waste materials. In these circumstances, this Post EA recommends that the Board impose a condition giving Massachusetts Department of Environmental Protection 30 days from the issuance of the Board's final decision to notify SEA of what further conditions, if any, it recommends the Board impose on NET prior to the institution of transloading operations for solid waste materials as a result of this project (with support for why the conditions are needed). The condition provides that SEA would review the response of Massachusetts Department of Environmental Protection and any reply by Applicant, and would then recommend the imposition of any additional conditions deemed appropriate, to address the specific concerns of Massachusetts Department of Environmental Protection.

Comment

Comments indicated that there was no evaluation in the EA of the possible existence of nuisance conditions such as odors, noise, and dust.

Response

In response, Applicant has provided supplemental information on odor and dust control methods that would be used at the reload facility. Applicant has stated that two types of dust controls would be implemented: general dust control and ventilation in structures, and dust controls at points of generation. Dust would also be controlled at each piece of stationary equipment, where hoods and ductwork would allow the capture of dust when the equipment is loaded with waste materials and direct the captured dust to air handling equipment specifically designed to remove the dust. This equipment, referred to as dust collectors, would provide continuous removal of dust that is entrained within the air stream. Cleaned air would be discharged from the collector down-wind of the filters.

According to Applicant, the dust control system would also serve to minimize odors. Applicant states that if additional odor control measures are required, odors would be controlled at the facility's door openings using several mechanisms. First, plastic or fabric strip doors at the vehicle and rail car openings would be installed (which would also be a further dust control measure). Second, an evaporator, piping, and nozzles would be placed on both sides (door jambs) of each door opening. Applicant's system would deliver a vaporized odor neutralizer through each nozzle at each door opening, thereby controlling odors where they would otherwise escape from the building. Mitigation that would require NET to undertake these practices is included in the Post EA. (See the noise comment response section for the noise-related response.)

Comment

Comments indicate that the EA cited old data sets in the analysis of groundwater impacts in describing only 4 or 5 contaminants of concern and contend that there are at the Olin site approximately 64 chemicals of concern and over 100 chemical compounds yet to be determined, citing a report from the U.S. Environmental Protection Agency.

Response

SEA's discussion of groundwater in Section 3.5.1 of the EA, Groundwater, describes the contaminants that characterize the dense, non-aqueous phase liquid (DNAPL) associated with the Olin property and does not claim that there are only 4 or 5 contaminants of concern. In preparing the EA, SEA reviewed the site history, the Construction Release Abatement Measure plan, and the conditions established by Massachusetts Department of Environmental Protection for redevelopment of the property, as well as the activities associated with the Proposed Action, to assess the potential impacts on groundwater. SEA determined that the Proposed Action would not adversely impact groundwater and that Applicant would not interfere with Olin's remedial actions, for the reasons explained above and in the EA.

Comment

Massachusetts Department of Environmental Protection commented that if contaminated soil and/or groundwater are expected to be encountered during property development, a separate Construction RAM Plan (plan to accelerate remedial actions) must be submitted for approval prior to any construction that could encounter contaminated media.

Response

Comment noted. As stated in the EA, Section 3.8.1.4, Actions Required Before Olin Site Redevelopment, prior to any development of the Olin property, Massachusetts Department of Environmental Protection must approve a Construction RAM Completion Report that documents the completion of sufficient remedial action to achieve a condition of no significant risk. If Applicant encounters contaminated soil and/or groundwater during property redevelopment, Applicant would be required to submit a separate Construction RAM Plan to Massachusetts Department of Environmental Protection for approval, before continuing development activities.

Comment

Comments stated that "Plant B" is not identified in a figure in the EA, making it hard to access the dangers of any construction around Plant B.

Response

Figure 3-2 in the EA displays the location of the physical structures of the ground water treatment facility, Plant B, as well as the remediation area. SEA considered the location of the physical structures and the remediation area in its evaluation of the Proposed Action.

Environmental Justice

Summary

Comments on the Environmental Justice discussion presented in the EA suggested a different threshold for low income than that presented in the EA, and questioned the referenced

block group number and the level of analysis of environmental justice issues. Specific comments include:

Comment

Comments questioned the low-income threshold used in the EA and suggested that the Department of Housing and Urban Development (HUD) low income guidelines should be used instead of the U.S. Census Bureau poverty levels. Comments suggested that by using the HUD guidelines, 24.5 percent of households in the Town of Wilmington would be low-income. One comment questioned why the EA did not pursue analysis of "high and disproportionate impacts" on the community. Other comments stated that there is an environmental justice violation because the people of Wilmington have already been subjected to excessive contamination.

Response

SEA followed guidance[24] prepared by the Council on Environmental Quality that states that agencies may use demographic data available from the Census Bureau to identify the composition of the potentially affected low income or minority populations. As stated in Section 4.12 of the EA, SEA reviewed 2000 Census data and did not identify any populations in the project area that would meet Census Bureau's criteria for low-income or minority populations. Based on this review of the demographics of communities within the immediate vicinity of the proposed project, construction and operation of the Proposed Action would have neither a disproportionately high nor an adverse environmental impact on minority or low-income communities, as explained in more detail in the EA.

Comment

Comments indicated that an environmental justice analysis should be performed for the Town of Woburn since the proposed project site is on the boundary of the two towns.

Response

The southern portion of the proposed project site lies on the boundary with Woburn. However, the activities associated with the Proposed Action would occur only in the northern portion of the site. The southern portion of the site would not be developed and would be subject to a conservation restriction implemented by Olin. The southern portion of the site does share a boundary with the Woburn landfill. But the only activities associated with the Proposed Action that would occur in Woburn are truck trips through the light industrial areas of Presidential Way and Atlantic Avenue. The EA properly concluded that there would be no significant impacts on Woburn resulting from the Proposed Action and therefore, there would be no environmental justice impacts in Woburn.

Comment

Comments claim a factual inaccuracy in the EA because the block group number cited in the EA (250173313002) does not exist in Wilmington.

[24] Council on Environmental Quality, Environmental Justice - Guidance Under the National Environmental Policy Act, December 10, 1997.

Response

The block group number cited in the EA is fact the entire Census Geographic Code (sometimes referred to as the Federal Information Processing Standards – FIPS Code). 25 refers to the state, 017 the county, 3313 the census tract, and 002 the block group.

APPENDIX A
COMMENT LETTERS

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Appendix A contains copies of letters received by SEA that comment on the EA. Attachments to the letters are not reprinted here. Below is a list of the agencies and individuals whose letters are reprinted in Appendix A. SEA also received many copies of a form letter commenting on the EA and a petition expressing opposition to the project. One copy of the form letter is reprinted here along with the first page of the petition. The names of individuals who submitted a form letter or signed a petition are also listed below. Note that not all hand written names were legible and hence, they may not be listed.

State Agencies
Massachusetts Department of Environmental Protection, Business Compliance Division
Massachusetts Department of Environmental Protection, Site Management

Town of Wilmington
Town Counsel (Deutsch Williams)
John Gilbert, GEO Insight (on behalf of Town of Wilmington)
Director of Planning and Conservation
Assistant Director of Planning and Conservation
Chief of Police
Director of Public Health

City of Woburn
Law Department

Town of Reading
Town Manager

Elected Representatives
Senators Edward Kennedy and John Kerry and Representatives Edward Markey and John Tierney
Woburn City Council
Rep. Bradley H. Jones, Jr.
Rep. James R. Miceli
Rep. Carol A. Donovan

Organizations
Concerned Citizens Network
Woburn Neighborhood Association, Inc.
Wilmington-Woburn Collaborative
Aberjona Study Coalition, Inc.
Headwaters Stream Team
League of Women Voters of Wilmington

Citizens
Charles McSheffrey
Raphael and Roberta George
N. Albert Galante
Jean Courtrey
Rose Buonarosa
John Frackleton
George Rooney
Deborah L. Duggan
Kevin and Patricia Kane
Mary Carpenter
Betty Bigwood
Michael McGrath
Ann Bisso
Charles Vaughn
Phillis and Carol Nye
William Cauty
Rose Stygles
Francis Hancock
M. Caldwell
Joyce Russis
Ann L. Yurek
Charles Gourlis
Suzanne Sullivan (Petition)

Petition Signatories
Saty Agarwal
Troy Allard
E.R. Allen
John T. Amicanjioli
Al Amp
Alfred Antinarelli

R. Antoneccio
George F. Aurim
Robert C. Autery
Ted Awazaeu
Janice Baldwin
Susan Barker
Denise Baylor
Patricia E. Bedell
Eunice Bell
Robert Bell
Ralph E. Belmore
Beverly A. Berrigan
Kevin D. Berrigan
Ella M. Bimore
Linda C. Bin
Charles R. Biondo
Karen Boeri
Patricia Bolte
Richard P. Bora
Gerald A. Boudeau
Paula Boudeau
John Bouden
Kae Boudreau
Melissa Boulheer
Greg Boutoures
Lois Bova
N.T. Branscombe
Noreen T. Brondo
Robert Brown
Stephen G. Brown
Jeff Brush
Shirley Brush
Kelly Brussed
Kevin Bubanas
Paul Bucef
Maureen Buckley
Theres Buonopase
Robert L. Burke
Carole A. Burke
Kevin Burke
Mr. Burr
Mary Calandrello
Kelly Burred
Maud Callen
Roy H. Carlson
Richard Carrocino
Helen Carta
Lucille Casey
Bart G. Carter
John Casey
Leon G Chalifour
Marilyn J. Chalifour
Ginny Ciampa
Mike Ciampa
Ken Cleary
Stephen Clement Theresa Clement
Rita Clemston
Michael Cloonan
J. Colbert
James J. Collins
Mary T. Collins
Steven Conner
Peter T. Connor
Susan Connor
Karen Conway
Allen Copeland
Gary Coplih
Paul A. Core
Sandra Coshing
Amae Creplih
Gertrude L. Crowley
George C. Crowley
Christini Cuddy
Dorothy J. Cunda
Michael A. D'Ambrosia
Mauri Darat
Norm E. Davis
Forrest Dawn
Ramon De la Cor
Helen Del Larto
Irene Del Rosse
Susan Dely
Adam DeMaw
Francis Desllett
Anne M. Desmond
Michael T. Desmond
Mario Dimeco
Cheryl Docks
Robert Doretta
Mary Doucette
Dee Doyle
Edward A. Draelusy
John Duans
Deborah L Duggan
Thomas J. Duggan, Jr.
Bertha G. Duprez
Joe M Earhorn
Scot Edwards
Mike D. Errice
Annette J. Fahey
DorothyAnn Fernald
Sue Fierro
Angelo M Figueredo
Mario Figuival
Margaret Fisher
Michael Fritzgeral
Allen Fucile
Sabrina Fucile
David Gain
Paul R. Gambamler
Kenry P. Gardner
John Garnett
Catherine Gosham
Charlotte A. Grasso
Kathleen A. Griffin
German Grosso
Eminue Grusso
Wes Guiney
Thran Ha
Walter Harrison
Kenneth Harwick
Catherine Healy
Joe Heddad
Craig Hess
Matthe Hil
Pat Hill
Be Hoeper
Evelyn R. Holt
Robert Houpren
Tim Hubbard
Ben Hurley
William C. Hursen
Louis Jackas
Rita A. James
George A. Jasper
Debbie Joe
Eric Johnson
Margaret Q. Jones
Francis E Jounsf
C. Kacanburas
Lorinda J. Kacanburas
K. Kacanburas
Harold C. Kacanburas
Frank Kame
Patricia C. Kenney
Larry Kevin
Wayne D. Kills
Mary Kirkouan
Nancy E. Kirwin
Evelyn Kucinski
Voffreg Labez
Samuel D. LaFollette
Lillian A. Lawler
Walter A. Lawler
Rob Lawrence
Jayne A. Lech
Nila Lemore
Joseph P. Lento
Mureha A. Lento
R.N. Lepae
Diane C. Lepae
Flora Linpeufelter
John P. Lippiello
Maryann Lotto
Ralph Luong
Rita MacInnis
Pam MacKenzie
Margaret Magee
Angelo Maglione
Stefoera Maglione

Marion Mahoney
Kelly Malatesto
John M. Malone
Kenneth Manson
Joseph Mareda
Tony Mattaliano
Mick Mattaliano
Robert Mattaw
Donna May
Janie McCarthy
Jerome McDonald
Robert L. McHugh
William J. McNabb
Bernard J. McNally
Al Meegary
Melkon Melkonian
Raymond Mercer
Dawn Metran
Al Meuse
Joe A. Miale
Daniel Michigan
Steve Miller
Medora Miller
Stephen F. Miloszewski
Sandra Minutolo
L. Mitchell
Jerry MoHolo
Laurie Moran
Robert Morgan
Larry Morgan
Mary Morgan
Mario Mororajo
Melissa Mount
Jame Murphy
Joan Murphy
Chris Murphy
Carol Mutchler
William D. Myer
Dorothy A. Neal
Dan Nguyen
Anh Nguyen
Deborah Noonan
George Nuttatt
P. O'Brien
Amy O'Connell
Tim Odea
Steve O'Dea
Ben OMulley
Gail Osleea
Carole Pazyle
Heidi Peters
Donna Pickett
Natalie Pishenin
John E. Polau
Linda Porter
Brenda Porter
Teresa Prochonski
Frank Puleo
Gerald Pupa
George Pyliotis
Lynette Ramsdell
Frank Ramsdell
Jane Rander
Constance M. Rando
Joan Ray
Joseph Rayf
Andrey Reed
Anthony Rescque
Lawrence Rinehart
Janet Ringdahl
William R. Ringdahl
John Ritchie
Jeff River
Michael Robellard
Jonne E. Roberts
Stephen Roberts
Tim Rooney
Clarice J. Ross
Paulee Rossetti
Roth
A. R. Rowe
Grace Russo
Rudy Z. Russo
Frederick C. Ryan Lori Ryan
Paul A. Sadowski
Joan M Sadowski
Bill Sauns
Susan Schultz
Edward Sherman
Michael Singne
Thomas Smith
Edward W. Smith
JoAnn Smith
Kathy Smith-Tomossion
John Sparee
June Spencer
Robet A. Spencer
Evelyn B. Stavro
William Sted
Annmarie Sted
Robert Stein
John Stevens
Frank Stevens
Lisa Stirn
Rita A. Straw
Virginia Succocen
Ging Sug
Maura Sullivan
Mark Sullivan
Alice Sullivan
Laura Sultan
Stanley Swdynski
Brian Tassi
Irene Taylor
Louis G. Teotsa
Elinor Thomas
Thomas Thornton
Susan J. Tingdahl
Frank Touserkani
Jane Tower
Diane K. Trombly
K. Tucker
Robert E. Uzzele
George Veloza
Anna M. Veloza
Anna VonKable
Jay Walsh
Neil Wami
Charles Ward
Loretta Warren
Viola A. Webb
Patricia Welch
Amy Whalen
John A. White
Gertrude White
K.A. Willet
Vincint J. Yentide
Samuel B. Yentile
Charlar Zalere
Sarah Zimmerman

Form Letter Signatories

L. Adams
John E. Amato
Marion A. Amber
Richard D. Balestrieri
Barbara J. Balestrieri
David M Balestrieri
Melissa Balestrieri
Nathan Balestrieri
Kellie Balestrieri
Richard N. Banner
Richard M Barry
Kathleen L Barry
Kathleen M Barry
Winifred M. Barry
Denise Bayles
Renata Bazikas
Sabrina Bellembien
Yasmen Bellembien
Frances R. Bent
Stephen N. Bosco
Barbara Bosco
Rosemarie Bromander
Peggy Brown
Barbara J. Busby

Mary Calandrello
Katherine A. Callahan
Sonya M. Carlson
June A. Carner
Donald F. Carson
Elizabeth Cavagnaro
Lorraine Chase
Stephen Clement
Margaret L. Cloane
Ronald A. Cohn
Melanie Collier
Thomas Congliaro
Ellen M Corson
Deborah C. Coughlin
Marilyn A. Cox
Matthew R. Cox
Christinie Cox
Richard D. Cox, Jr.
Richard D. Cox, Sr.
Helen Cuakley
Frank D. Curley
Aiton C. Dalilus
Helen Del Torto
Sanden Doherty
Dianne Doherty
Kellie Doherty
Joe Doherty
Alice T. Doherty
James P. Doherty, Jr.
Robin Domek
Evelyn Donato
Eugene Donato
Julie O. Donoghue
Robert Donoghue
Barbara J. Doucete
Joseph Duggan
Judus Duggan
Natalie J. Duggan
Thomas J. Duggan
Marjorie M Ennis
Warren K Farrell
Anne T. Farrell
Kristin Farren
Timothy Finn
Matthew T. Finn
Jane M. Finn
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Laura Foley
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Herbert Garey
Katrina Gierdenz
Marie Gilardi
Charles N Gilbert
S. Gillis
Edmund Gorsett
Christine Gualtieri
Nicholas Gualtieri
Mark Gualtieri
Alec Gualtrni
William P. Hart
Francis Hawks
Pat Hill
Ellen V. Hogan
E.M. Holt
Elizabeth Homem
Nancy Iorio
Ronald Iorio
Joan Jacob-Curley
Lois A Jason
Shirley A. Jeffrey
John D. Jeffrey
Robert T. Jones
Khalid Karkache
Mohammed Karkache
Sam Karkuche
Adam Kearn
Denis M. Kearns
Michelle Kearns
Patricia C. Kenney
M. Josephine King
Mary F. Kurenger
Noah Kwet
Owen Kwet
Laura Kwet
Donald Kwet
Samuel D. LaFallethe
Marjorie A. Lamkin
Karen Larigne
Anastasia Latta
Janet Lee Jeanette Lerner
Heidi Logan
Doreen Loud
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Andrew G. MacLeod
Robyn C Mahattan
Thomas Manhattan
Helen V. Mann
Anne C. Manro
Justine Marguard
Helen Maulton
Jean A. McCarthy
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Daniel McDade
Daniel McElkney
Beth McElkney
William M McGuire
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L.H. Meyer
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Rabel Murphy
Edith T. Nardezno
Paula Nick
Robert Nick
Maureen Nuttal
Michael Nuttal
Ann M. O'Shea
Fred Pagano
Michael D. Pagonard
Marcus Phillips
John Raymond
Catherine Raymond
Donna Robbins
Mary Rooney
Anne B. Rose
Sue Rowe
Jim Ruff
Sharon Ruff
Virginia Saccocen
Edna Sandstrom
Thomas J. Scolastico
Vera Scolastico
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Judith A Simmons
Louise Southmayd
Barbara Sullivan
Kathleen Tolson
Margaret Tremarchi
Marianne Treton-Marino
Adrienne Tsang
Cynthia Tsoukalas
Anthony S. Vibert
Debbie Vibert
Dung Vo
Ernest M Wallent
Louis M Wallent
Rose Wallent
Viola A. Wehl
P. Wetzl
E.D. Woods
Laureen Zakrewski